RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/43UK/LIS/2009/0090
Premises: 24 Weston Drive, Caterham, Surrey, CR3 5XY
Applicants: Mr Ahmed Alef and Mrs Sakina Ashrafuzzaman
Joined Applicant: Ms Jean Shaw
Respondents: Gradeband Ltd., The Village Association Ltd. and Alexander House (The Village) Management Ltd.

Tribunal
Mr D. R. Hebblethwaite (Lawyer Chairman)
Mr R. A. Potter (Valuer Member)
Miss J. Dalal (Lay Member)

DECISION

Note: This Decision has been delayed for a succession of reasons. The case was originally listed for Inspection and Hearing on 15 and 16 April 2010, and indeed the Inspection took place and the Hearing was opened on 15 April at The Harlequin, Redhill, Surrey. However, it became apparent to the Tribunal that the case was not ready for hearing. A number of oral directions were given to the parties, the Hearing was adjourned part heard and the second day was vacated. The adjourned Hearing took place on 9 July 2010 at The Harlequin. This lasted all day and the Tribunal was left with no time for consideration. It reconvened at the earliest date convenient to members on 21 July when many issues were dealt with. However, the Tribunal was forced to issue Further Directions as a result of its consideration and these were sent out in writing dated 23 July 2010. These Directions called on the Respondents to explain their policy with regard to reserves and to disclose certain documents. By the compliance date certain Tribunal members were on summer holiday. The Applicants filed a response and it was well into September before Tribunal members could discuss these outstanding issues.

1. On 8 October 2009 the Applicants issued an application for a determination of liability to pay and reasonableness of service charges in relation to the Premises under section 27A of the Landlord and Tenant Act 1985 (this will be referred to in this Decision as "the Act" and a reference to a section means a section of the Act). The determination was sought for the years 2005 to 2009 inclusive (in the case of 2009 on the basis of the demand for estimated expenditure). In the application the Applicants stated that they wished to make an application under section 20C. Mrs Shaw was joined as an Applicant by the Directions dated 25 November 2009, which also provided for statements of case, witness statements, bundles, etc.

2. The relevant statutory provisions in relation to this application are first in section 19 which says:

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonably standard,
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

and secondly in section 20C which provides that an applicant may ask for an order:

...that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... leasehold valuation tribunal...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant...

3. The Premises are in a two storey block of eight flats (Alexander House) on the first floor. Access is from an outside balcony into an entrance hall shared with another flat. There is UPVC double glazing to the windows. The flat has the use of a bin store and parking. There are external lights, but problems with the light in the entrance hall were reported on the Inspection. The railings to the balcony were peeling in places. There were some cobwebs in the bin store and the tiled floor of the entrance hall was dusty; the hall was, however, well decorated and, subject to the comments above, the common parts appeared clean and well presented and the Tribunal got a good overall impression as they did of the development as a whole; a number of blocks of flats stand among houses in landscaped grounds on a large site, formerly military property in Caterham. There are 256 residential units and some commercial units.

4. The lease of the Premises to the Applicants dated 30 June 2003 is from Linden Homes South East Limited. The First Respondent is successor in title and, therefore, currently the landlord. The Second and Third Respondents are parties to the lease. There is a covenant by the Respondents to pay the Third Respondent a maintenance charge (for the purposes of the Act this equates to service charge) being the proportion set out in the lease of the costs incurred by the Third Respondent in complying with its obligations in Schedule 7 to the lease in relation to Alexander House. There is a separate covenant by the Applicants with the Second Respondent, which requires a cross-reference to a rentcharge deed dated 5 August 1999 made between Linden Homes South East Limited and the Second Respondent, the net effect of which is to make the Applicants responsible for a contribution to the costs incurred by the Second Respondent in relation to the site as a whole. In each case

reserve funds are permitted and contributions may be included in the service charges. Unfortunately there were no copies of the rentcharge deed nor a typical transfer deed for a freehold house on the site (which the Tribunal required to see for comparison purposes) at the original Hearing, one of the reasons for the adjournment on 15 April.

5. At the original Hearing Mr Alef appeared (accompanied by his father). Mrs Shaw had been at the Inspection but was unable to attend the Hearing. The Respondents were represented by Mr Allsop and Mr Muir-Rolfe from Hazelvine Limited, the Respondents' agents. After explanations from both sides to assist the Tribunal in understanding the arrangements at the site and an initial airing of some of the more important issues, the adjournment took place for, among other things, the production by the Respondents of documents required by the Tribunal, the inspection by the Applicants of invoices held by Hazelvine and the copying of certain accounts by the Respondents; directions were given orally at the end of the Hearing which further included the Applicants putting questions to the Respondents and provision for replies.

6. At the adjourned Hearing on 9 July Mr Alef (accompanied by his father) and Mrs Shaw appeared to represent themselves, with Mr Muir-Rolfe and Ms Brooks from Hazelvine for the Respondents. The Tribunal had received a full statement of case from the Applicants in the meantime and a full response from the Respondents. These documents had been served by the parties on each other. Accordingly, it was quite clear to both the Tribunal and the parties themselves what the case of each party was. It is, therefore, not intended in this Decision to set out in full everything that was said at the Hearing but rather those points which either were emphasized by a party or which were queried by the Tribunal. For further details of the parties' cases reference should be made to the written statements and bundles.

7. Mr Alef suggested that some of the services were provided under long term contracts which would have required consultation with tenants under section 20. He referred to the gardening and security contracts which are annual but not tendered annually. He also raised whether the management contract with Hazelvine was a long term contract. Mr Muir-Rolfe stated they had been appointed by Linden Homes at the outset in 2002 and were subject to three months' notice. Mr Alef emphasized that the main issues were cleaning, electricity bills and insurance. Mr Muir-Rolfe stated that they use an independent insurance broker and changed this year after getting seven or eight quotes. Mr Alef and Mrs Shaw were very concerned at their level of contribution to communal gardens on the site. Ms Brooks informed the Tribunal that the communal gardens included the front gardens of the freehold houses. She showed the Tribunal a plan of the site on which these could be seen. The justification is that this keeps the appearance of the estate uniformly tidy. Mrs Shaw said that most houses have hedges and fences round the front garden. There are similar circumstances regarding the gutters of the houses. Mr Alef then emphasized the point about the Respondents not taking up a resident's offer to do the accounts at a cheaper rate than the accountants used by the Respondents.

8. After lunch the subject of security was discussed. It is in the charge to the Second Respondent. It was noted that the Respondents had produced an unsigned statement from Roger Wright setting out the security arrangements. Ms Brooks explained that he was a resident and chairman of the Gardening Committee and acted as Hazelvine's "eyes and ears" on the site. The Applicants felt he was too closely aligned with Hazelvine. Ms Brooks said that the security regime was what the residents opted for at a meeting held after the builders left the site in 2005. Mrs Shaw said that this looked impressive on paper but the guard spent every evening watching television in his hut. Patrolling is occasional and the guard does not wear a uniform. Information about the security was provided in the newsletter called "The Village Gossip". However, this was not delivered to every home (not hers for one). She next criticised the standard of the gardening with particular regard to tree maintenance. There was a lack of watering, and she produced a photograph of two trees near her flat which had been planted, then not watered and were now dead.

9. The Applicants emphasized their points on cleaning and lighting at Alexander House. The cleaning had not been to a reasonable standard throughout; from 2005 to 2008 the halls had been smelly; 2009 was acceptable except the bin store. Mr Muir-Rolfe stated there had been three contractors during this time. Mrs Shaw said that she has obtained a quote which is in the bundle. The Applicants feel that the amount for 2008 should be halved. Lighting was the next point of emphasis for the Applicants. There are ten outside lights and two lights in each of the four entrance halls. The issues are the bills and the lack of repairs. Some of the bills were far too much. This was acknowledged by Mr Muir-Rolfe who undertook to pursue the true reading of the meters. There was particular criticism by the Applicants of a bill for repairing the entry phone where travel was more than half the charge.

10. The parties were invited to address the Tribunal about the section 20C application. Mr Alef said that the landlord's accounts were not clear and the Respondents had not been helpful in resolving matters before the application was made. He "wasn't getting any joy". He had no desire not to pay and said that he was benefitting from where he was living. Mr Muir-Rolfe stated that there had been long discussions with the Applicants They hadn't paid while everyone else had. The Respondents believe that the Applicants' motivation is not to pay. At this point Mr Potter asked Mr Alef why nothing had been paid and he replied that it was because the Respondents had been adding admin. fees for unpaid service charges.

11. At its subsequent consideration the Tribunal confirmed that there were no long term contracts involved. Section 20ZA (2) defines a qualifying long term agreement as:

    An agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

    The contract has got to be made for more than twelve months at the time it is made. An annual contract, whether or not it is renewed, is not a long term contract, neither is a contract of undefined duration but subject to termination on giving notice of less than twelve months. The management contract falls under this last category.

12. The Tribunal next considered the service charges for the site, that is those payable to the Second Respondent. The Tribunal had got the impression of a general objection to many aspects of this obligation on the part of the Applicants and of their to a degree not knowing what their legal obligation was. However, the lease and the rentcharge deed make this quite clear and it should have been explained to the Applicants by their solicitors when they bought the Premises. There have been some changes in that the bus voucher scheme stopped in 2007 and the leisure club charge is not collected since a court case in Reigate County Court, also in 2007, involving the Second Respondent and Robert & Andrea Frost. The CBCT contribution, however, fixed at £50 per annum, index linked, is payable. It is correct that the garden services to which the Applicants (in common with all owners, freehold and leasehold) must contribute include the front gardens of the houses. On the other hand the maintenance of the gutters of the houses and other buildings is not the responsibility of the Applicants and the flat owners. The charges for all the years in question must be adjusted to remove whatever amount is included for the guttering, together with any contribution to reserves attributable to cyclical redecoration or replacement in relation to this item. This is an exercise that the Tribunal cannot do because it does not have enough information. **The Second Respondent is directed to carry out this exercise** with a view to seeking agreement of the Applicants. In case this fails the application will be left open for any party to come back to the Tribunal. With regard to security, it is clear that the Applicants expect there to be no problems as they have security and they are not getting what they expect. The Respondents provided a robust defence of what the security guards do, relying on Mr Wright's statement. As to the standard of the service, the Tribunal accepted the assertion that the level and type of service was what the residents voted for in 2005 and that no one else in this very large development was complaining (of course, this applies to everything raised by the Applicants and the Joined Applicant but the Tribunal felt it of particular importance in regard to security). There may well be lapses as described by Mrs Shaw, and the Tribunal thinks that it would be preferable for the guards to wear a uniform to provide a better visual presence, but overall there was insufficient evidence for a finding that the service was not of a reasonable standard. As regards the cost, the Tribunal finds that it is reasonable.

13. Continuing the consideration of the charges for the site, the Tribunal decided re. accountancy and company secretarial duties on the same basis as for Alexander House (please see below). The same is so for management charges. Regarding the remaining heads of cost, the Tribunal found that the Respondents' replies to the Applicants' various points were acceptable and that the charges were reasonable in amount. The Applicants' points on tree maintenance were fairly answered by the Respondents. The general appearance of the site, which includes the trees, is in the Tribunal's view very good. The two recently planted trees dying, in what had been a run of exceptionally hot and dry weather, was not in the Tribunal's view sufficient to displace the overall impression.

14. The Tribunal next considered the charges for Alexander House, starting with cleaning. There is no evidence of complaints before that of Mrs Shaw in December

2007, so the Tribunal will not go beyond that date. The Respondents acknowledge some difficulties. Now fortnightly cleaning does not seem unreasonable and the areas concerned will not be clean all the time. The change of contractors confirms that there had been an issue with the predecessors. The basic charge of £16 per visit is not unreasonable. The total figures in the accounts for 2008 and 2009 do, however, appear unreasonable and will be adjusted as follows: 2008 halved to **£435.08** and 2009 reduced to **£300**. Despite Mr Alef's remarks, the Applicants have ticked the 2006, 2007 and 2008 entries for lighting (which appears as "lighting maintenance" on the 2009 estimate – likely to be a more accurate description as there is a separate item for electricity) on their annotated copies of the accounts produced to the Tribunal; there is no charge in 2006. The Tribunal is concerned about 2009, especially the Respondents' rather disingenuous position of not producing the invoices because the Tribunal is "only" considering the estimated charges for 2009. In fact, the actual accounts for 2009 were issued between the original and adjourned hearings and were before the Tribunal. It would have been preferable for the Respondents to produce all relevant invoices to enable the Tribunal to comment on the actual accounts as well as the estimate. That said, the 2009 estimate of £200 is not considered unreasonable. The Respondents have effectively accepted that the electricity charges are unreasonable and the Tribunal endorses this. It is prepared to rely on the Second Respondent's (per Mr Muir-Rolfe) undertaking as described in para. 9 above. The application will be left open for any party to come back to the Tribunal if this is not resolved.

15. The Applicants' comments on the entryphone and the Respondent's replies raise the point that, in the Tribunal's view, the accounts are sometimes muddled and the use of the reserves is odd. We return to the subject of reserves later, but point out to the Respondents that accounts which are unclear can sometimes lead to queries which need not have arisen had the accounts been easier to understand. It is the view of the Tribunal that the charges for the maintenance/repair of the entryphone are unreasonable to the extent that they include travelling costs, often from long distance. The Respondents could consider a maintenance contract with a local tradesman rather than ad hoc instructions from time to time. Accordingly, the **travel time charge plus VAT must be stripped out of every charge under this head.**

16. It is inevitable that two sets of accountancy fees and company secretarial fees will be incurred. There are two companies. This is the set-up that the Applicants bought into. The Tribunal finds the accountants' fees reasonable. There is no information on the qualification or experience of the resident who has offered to prepare the accounts for a lower fee, and the Respondents are entitled to instruct a firm of chartered accountants, who will have professional indemnity insurance. It is noted that the Applicants complained that the accounts were not audited. This is not in fact a requirement, so the accounts being prepared by a firm of chartered accountants is clearly desirable and, therefore, reasonable. As to the company secretarial fees, the same point applies in relation to the resident's offer as to the accounts. However, the amount charged is unreasonable. The Tribunal is well aware of the duties of a company secretary as regards filing an annual return and the accounts with Companies House and HM Revenue & Customs. **The charge will be**

halved for each year for both companies (Second and Third Respondents). Regarding general maintenance, potentially unclear accounting and the use of reserves rear their head again. However, there is no item of expenditure that seems to the Tribunal to be unreasonable. The item for redecoration in 2009 is not in the estimate.

17. The Tribunal considered insurance next. The lease is clear that the Third Defendant is obliged to insure the building (Alexander House) and the lessees, including the Applicants, are obliged to contribute to the premium as part of their service charges. The policy appears to be a standard one for the building concerned and it is common, even normal, now to include terrorism cover. Mr Muir-Rolfe had told the Tribunal that his firm used an independent broker who obtained several quotes. The Tribunal finds that the premium is reasonable. Mr Alef's objections relate to the fact that the insurers would not pay a claim he made following a burst pipe in the Premises at the end of 2005. The Tribunal is not in a position to adjudicate in this matter, which is not in itself reason to justify that the premium is unreasonable. The Tribunal considered the management fees (which also apply, separately, in the site charges). The Tribunal calculated that on the latest figures the charge is about £85 per residential unit for the site and £171.88 per flat in Alexander House, a total of £256.88. The Tribunal finds that these figures are not out of line with fees charged by managing agents of these sort of developments. This particular site looks well managed. The determination is that the services are of a reasonable standard and the amounts are reasonable.

18. It was at this point in its consideration that the Tribunal members discussed the reserves. They had already come up (see paras. 15 & 16 above) and overall an explanation was required from the Respondents before the Tribunal could assess whether the amounts included in the service charges for contributions to reserves were reasonable. This led to the Further Directions dated 23 July 2010. The Respondents filed documentation on 6 August. Mr Alef wrote a response on 9 August and Mr Muir-Rolfe responded in turn on 1 September.

19. The Tribunal determined that in the years in question the contributions demanded to reserves were on the high side but there is no basis for reducing them (except "gutter maintenance" – see below). However, for the future the Tribunal has a number of comments. The Respondents are not correctly distinguishing between capital projects and cyclical maintenance which justify reserves and annual maintenance which should come out of income. This is apparent when looking at the details filed by the Respondents on 6 August, where you can see the Respondents dipping into reserves in several categories, sometimes on an annual basis. Best practice is to have clear categories showing exactly what the reserves are being built up for, in the case of cyclical maintenance what the planned cycles are (e.g. paint exterior of Alexander House every X years) and then the amount that is wanted to be built up in a given number of years. It will then be possible for lessees to see exactly how their contributions to reserves are calculated and whether, therefore, they are reasonable. Then the reserves must be ring fenced and used for what they are intended. Annual regular maintenance must be paid for out of annual service

charges. The Tribunal has some comments on the categories, starting with the site. Reserves are appropriate for tree *replanting* rather than maintenance. The Tribunal would be of the view that plant replacement would be on a rolling, annual basis and cannot see the justification for a reserve fund. Roadways, footpaths and parking areas need a lot more information to see how the amounts demanded are arrived at. If the gutter *replacement* reserve is to be continued the Applicants must not be asked to contribute to it. They are in any event not liable for the gutters of properties other than Alexander House (see para. 12 above) so the major cost referred to in the Respondents' details shall not fall on them. The Respondents are **directed to refund to the Applicants all payments made to the gutter maintenance reserve fund** (or, if not paid, to cancel the demands for them). It would be reasonable for an appropriate amount for gutter *replacement* to be included in the Alexander House general reserve. "General maintenance Toy Store" should be removed from reserves. The reserve fund for security was set up for CCTV that was not proceeded with. The Tribunal can see no justification for continuing with this and suggest it is wound up. The balance could then be transferred to another reserve account or accounts, thus reducing contributions for a year or two. The same goes for the street lighting reserve, in the Tribunal's view. Turning to Alexander House, the amounts concerned hardly justify separate reserve accounts, even with the addition of something for gutter replacement.

20. The Respondents must simplify and correct the reserves policy. It must be transparent and clear to tenants and consistent as to what the reserves are for. There is a lot of work to do and all the lessees need to have this explained. Indeed, much better communication with lessees is necessary in general.

21. Mr Alef queried the service of demands in his response of 9 August. This is not a matter upon which the Tribunal can adjudicate.

22. The Tribunal has determined to grant the section 20C application. This is not a case of overall poor management and, individually, most of the charges have been found reasonable and payable by the Tribunal. However, the Tribunal has criticized the accounts, with particular regard to the reserves. The lack of clarity no doubt contributed to the Applicants' feeling that they had to make this application. There was also poor communication from the Respondents both before and after the application was issued. The Tribunal strongly disapproves of the Applicants' not having paid any service charges – the reason given by Mr Alef at the Hearing was wholly inadequate – but this does not counter the basis of the section 20C application being granted.

23. For reasons which, hopefully, are clearly explained in this Decision it has not been possible for the Tribunal to state a specific amount which is now payable. Rather, the determination is that **the amount payable is that which is arrived at by carrying out the calculations and adjustments highlighted in bold throughout the Decision** and which are now summarized:

    (a) Adjust the charges for gutter maintenance, including reserves (paras. 12 & 19).

(b) Travel time plus VAT to be stripped out of every charge for maintenance/repair of entryphone (Para. 15).

(c) Halve the company secretarial fees for each year for both companies. (para. 16)

The application will be left open for any party to come back to the Tribunal if the figures following adjustment cannot be agreed.

The Tribunal did amend two actual amounts for cleaning, so that the payable amounts are **£435.08** for 2008 and **£300** for 2009 (para. 14).

24. This is a large and generally well managed site. However, there have been some mistakes. These must be rectified. The reserves must be put on a proper footing. If this is done the confidence of the Applicants and other tenants can be restored and further applications to the Tribunal avoided.

Signed Mr D R Hebblethwaite
Decision dated 20 October 2010